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## RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* MARK E. KRIEGSMAN and BENJAMIN W. WYCKOFF

Appeal 2009-011064  
Application 09/668,110  
Technology Center 2400

Oral Hearing Held: July 13, 2010

Before JOHN A. JEFFERY, HOWARD B. BLANKENSHIP,  
THU A. DANG, *Administrative Patent Judges.*

## APPEARANCES:

ON BEHALF OF THE APPELLANT:

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1        The above-entitled matter came on for hearing on Tuesday, July 13,  
2 2010, commencing at 9:26 a.m., at the U.S. Patent and Trademark Office,  
3 600 Dulany Street, Alexandria, Virginia, before Paula Lowery, Notary  
4 Public.

5 THE CLERK: Good morning. Calendar Number 5 Appeal No. 2009-  
6 011064, Mr. Huang.

7 JUDGE JEFFERY: Good morning.

8 MR. HUANG: Good morning, Your Honors.

9 JUDGE JEFFERY: You'll have 20 minutes, and you can begin whenever  
10 you're ready.

11 MR. HUANG: I have some remarks about problems that are solved by my  
12 client's invention. This application is about serving dynamic web pages, in  
13 particular to the updating of obsolete portions of a dynamic web page.  
14 In serving web pages, downloading the web page from an original network  
15 through the server takes time. So it's much more efficient if we can store a  
16 copy of the web page in a local cache memory and serve that web page from  
17 that cache memory.

18 So this application provides a cache server having a cache memory, and a  
19 cache manager that manages how web pages are stored in the cache  
20 memory. Storing a web page in a cache memory has some problems  
21 because web pages are dynamic. It gets updated from time to time.  
22 For example, if we have a web page of a stock exchange, and the web page  
23 has information of a stock price. If you store a copy of that web page in  
24 cache memory, the stock price might be updated a few seconds later, or it  
25 might stay the same for the entire day.

1 If you have a policy of updating the web page in the cache memory  
2 periodically, say every 15 minutes, then it's possible that, once you store that  
3 web page in the cache memory, the stock price changes a few seconds later.  
4 Then the web page becomes obsolete for the next 14 minutes. You're  
5 serving a web page that has incorrect stock prices.

6 JUDGE JEFFERY: Doesn't the whole dispute in this case really turn on the  
7 meaning of "obsolete" and what that means?

8 MR. HUANG: Yes.

9 JUDGE JEFFERY: I say that because a lot of the arguments in the briefs  
10 tend to center on that notion of obsolescence. The Examiner cited the Scherr  
11 reference in a 102 rejection.

12 MR. HUANG: Yes.

13 JUDGE JEFFERY: As I understand the Examiner's position, he's basically  
14 citing two different types of "triggering events" which, as I understand it,  
15 you don't dispute the two types of events as being triggering events. It's the  
16 particular type of triggering event that you challenge the Examiner on,  
17 specifically a lapse of a predetermined amount of time.

18 I think in the Scherr reference it indicates 15 minutes that can go by, and you  
19 can refresh the page automatically.

20 MR. HUANG: Yes.

21 JUDGE JEFFERY: Or, secondly, a log-on procedure that will automatically  
22 pre-fetch pages.

23 MR. HUANG: Yes.

24 JUDGE JEFFERY: So my question to you is, and going back to this term  
25 "obsolete," because I think it's a critical term, when I refresh a page on the  
26 web or server doing this -- whatever -- it overwrites the earlier page, right?

1 I have a page I'm starting with, and let's say 15 minutes goes by, and then I  
2 refresh the page. Am I supplanting that page with a new page at that point?

3 MR. HUANG: Your Honor, when you say refresh a page, do you mean  
4 refreshing the page at the original server, or refreshing the page at the cache  
5 server?

6 JUDGE JEFFERY: The cache server. Let's say the cache server for now.

7 MR. HUANG: Yes.

8 JUDGE JEFFERY: When I refresh a page at a cache server, I have an older  
9 version and a newer version.

10 MR. HUANG: Right.

11 JUDGE JEFFERY: So my question to you is why isn't the older version,  
12 after it's refreshed, "obsolete" with respect to the newer version?

13 MR. HUANG: Well, because the web page at the original server might not  
14 change. So if it doesn't change, then the old version and the new version are  
15 the same. When you update it, you're getting the same copy of that web  
16 page as it is stored in the cache memory.

17 So even though you get a new copy, the contents are exactly the same.

18 JUDGE JEFFERY: Okay. So if let's say for the sake of argument it's the  
19 exact, identical HTML code, whatever it is that corresponds to the page.  
20 The fact that it's the same nevertheless doesn't preclude the fact that I've  
21 overwritten that with the same code I had before. It's the identical page.  
22 I think therein lies the misunderstanding we have with the Examiner's  
23 position and your position, as I understand it. The Examiner seems to be  
24 saying that this notion of refreshing a page every 15 minutes renders the  
25 older version obsolete, notwithstanding the fact it might be the same content  
26 coming to you 15 minutes later.

1 I bring this up because I noticed in Scherr that the 15 minute refresh  
2 embodiment, if you will, seems to be in the context of a stock market trading  
3 environment. I'm referring to Column 6 starting around line 18 on down.

4 MR. HUANG: Yes.

5 JUDGE JEFFERY: So I say this because I think it goes to the very notion of  
6 what does it mean to have an obsolete page. When I say that, I could not  
7 find a specific definition of "obsolete" in the specification.

8 Perhaps you can point me to one, but absent any definition of that term, we  
9 need to construe that with its plain meaning there. So if there is no such  
10 definition, then that's what we have to do.

11 So is there a definition of obsolete in the spec? That's my first question?

12 MR. HUANG: There are examples of what it means to be obsolete. The  
13 specification doesn't explicitly say, well, this is the definition of obsolete;  
14 but I wish to point Your Honor to page 5, line 17 of our specification.

15 It says there: "In other cases, however, obsolescence can strike an object at  
16 any time with little or no warning. For example, if an object lists special  
17 sale items available at a store, it is entirely possible that the sale will be so  
18 successful that the inventor of certain popular items will be prematurely  
19 depleted. Under these circumstances, the object may become obsolete long  
20 before it is scheduled to be updated."

21 So this one specifically points to the difference between our invention and  
22 the prior art. The prior art shows updating web pages on a periodic basis.  
23 It's scheduled to be updated, for example, every 15 minutes. But in our case,  
24 we say that some objects may become obsolete before that scheduled time,  
25 and we provide an example. So that is the problem our invention tries to  
26 address.

1 We specifically claim triggering events that detect existence of  
2 obsolescence, and this is the type of obsolescence that we're talking about.

3 JUDGE JEFFERY: Sure, and my understanding of what something is  
4 obsolete means is you're no longer using it kind of thing. It's a term that  
5 goes to something that simply is no longer used.

6 So I think the misunderstanding here -- I appreciate the passage here in the  
7 specification. I think the problem we have is the broadest reasonable  
8 interpretation of "obsolete," and the fact that does it or does it not preclude  
9 an automatic refresh after a predetermined period of time where that refresh  
10 would, in effect, override what you had before.

11 I also point out, too, it's notably important to point out the log-on  
12 embodiment as well. My understanding of that particular embodiment is  
13 when you have a user that logs on the system and, you know, you have a  
14 pre-fetch capability that happens every single time you log on, and this  
15 feature can be combined with a user that, let's say, habitually goes to a  
16 particular financial journal and winds up checking stocks.

17 Right after they look at the journal, it'll automatically pre-fetch those things,  
18 too, in conjunction with that usage. There's clearly a teaching here of a  
19 periodic, or at least every time an event occurs, you're going to pre-fetch  
20 pages.

21 I think the real core issue here is notwithstanding the fact that there may not  
22 be a recognition that a particular page's content has changed; but the fact that  
23 it will change by virtue of refreshing the page I think goes to the whole  
24 notion of what is an obsolete page.

25 MR. HUANG: Your Honor, I want to address the issue of refreshing web  
26 pages automatically when the user logs on.

1 If the cache memory doesn't have a copy of the web page, according to the  
2 technique taught by Scherr, the cache server will automatically download a  
3 copy of the web page from the server.  
4 That has nothing to do with whether a copy of the web page in the cache  
5 memory is obsolete or not. Because if there's no web page in the cache  
6 memory, the cache server would still go on and download a copy of the web  
7 page.  
8 So that kind of triggering event can't be a triggering event that indicates the  
9 existence of an obsolete portion of the web page because it doesn't matter  
10 whether the web page is stored in cache memory or not. So that kind of  
11 triggering event is not the type cited in the claim.  
12 JUDGE JEFFERY: I understand. I just would point out that it looks like to  
13 me that Scherr also indicates you can couple that pre-fetch base trigger by  
14 log-on, along with the user -- the way the user actually uses the data.  
15 It's probably easier to point out what I'm looking at. Column 6, line 35  
16 down to 41.  
17 MR. HUANG: Yes.  
18 JUDGE JEFFERY: It says: "To illustrate this if the users of a financial  
19 journal web page habitually go to a stock quote site when they finish the  
20 journal pages, the pattern can be combined with pre-fetching of pages ever  
21 time the journal pages are fetched."  
22 So it sounds like to me there's some kind of repetition going on there at least.  
23 So if a user has something stored before, whenever they go back to the  
24 particular journal and then that new data would come in; but in any event, I  
25 think the real core issue before us here is what does "obsolete" really mean?

1 MR. HUANG: I wish to point to the claim limitation. It says the existence  
2 of an obsolete portion of said web page, and the specification also mentions  
3 that the web page can have two portions. One is the static portion, and one  
4 is dynamic portion.

5 So what we're saying is the dynamic portion may change; and, therefore,  
6 when it changes at the original server, then that copy of the web page in the  
7 cache memory becomes obsolete.

8 So I think this addresses your question of the definition of obsolescence.

9 You mentioned that the Examiner may take the position that when a web  
10 page gets downloaded to the cache memory then the old version becomes  
11 obsolete.

12 But in our spec we do define web page as having static portion and dynamic  
13 portions. So it's only when the dynamic portion changes, then that portion  
14 of the web page becomes obsolete.

15 Therefore, if you download the same web page and the static portion is the  
16 same, then the static portion is not obsolete. So I think that provides a  
17 definition of what obsolete means.

18 JUDGE JEFFERY: Okay.

19 MR. HUANG: I also wish to point to an argument that the Examiner makes.  
20 The Examiner points to Appellant's specification stating that the  
21 programmable script can detect certain triggering events that indicate the  
22 passage of time, and said that, well, because your spec has that limitation,  
23 therefore, the claim covers that.

24 JUDGE JEFFERY: I understand that argument, and certainly that doesn't  
25 limit the scope of the claim.

26 MR. HUANG: Okay.

1 JUDGE JEFFERY: I mean, we run into this kind of thing all the time. You  
2 know, are we supposed to read in limitations from a specification into the  
3 claim, and we don't do that unless you have a specific definition. So I  
4 understand the argument.

5 In the interest of time here, I do have a question for you regarding another  
6 claim.

7 MR. HUANG: Sure.

8 JUDGE JEFFERY: Claim 8.

9 MR. HUANG: Yes.

10 JUDGE JEFFERY: Which was separately argued. Here we're calling for  
11 the update -- the cache server to request an update establishing  
12 communication with an origin server. So you receive the updated portion  
13 from the origin server.

14 Now, as I understand the Examiner's position here, the Examiner is taking  
15 the position that Scherr in Figure 2A, let's say, at Step 34, it looks for data in  
16 the cache, and if it's not there, it'll say, okay, I'm going to request that data  
17 from the network.

18 As I understand your position, that doesn't mean "origin server." I mean,  
19 merely indicating that the data comes from the network doesn't mean origin  
20 server, is that the crux of your position?

21 MR. HUANG: Yes.

22 JUDGE JEFFERY: One issue with this that I have is if I'm getting data  
23 from a network, wouldn't there be some kind of server that would provide  
24 that data? I mean, it's not coming from thin air. The data is being provided.

1 MR. HUANG: Right, that data is provided by the server, but our position is  
2 the Scherr reference does not specifically say the data comes from the origin  
3 server.

4 JUDGE JEFFERY: Okay.

5 MR. HUANG: I'd like to go on to Claim 16. Claim 16 recites that the web  
6 serving system provides a communication path between the programmable  
7 script and an administrator process.

8 The Examiner points to the Scherr reference in which he talks about an  
9 administrator that can choose between different cache management  
10 processes.

11 Our argument is that it's the administrator that is recited in the Scherr  
12 reference is either a human or expert assistant.

13 It only makes a decision after deciding which cache management process it  
14 wishes to choose.

15 Claim 16 talks about programmable script, so it's different from choosing  
16 among different processes for cache management. It's a communication  
17 path between the administrative process and programmable script. So that's  
18 different from Scherr.

19 JUDGE JEFFERY: What do you make of -- I understand the argument. My  
20 question to you is what do you make of the configurator in Figure 2A of  
21 Scherr?

22 I have to say your point is well taken regarding Column 5, and he's talking  
23 about the administrator of the backbone link that can confer to configure the  
24 cache management system and use a particular technique.

25 MR. HUANG: Yes.

1 JUDGE JEFFERY: But in Figure 2A we have Step 22 where you go to  
2 some type of configurator, and that configurator then configures the cache  
3 method for the site, data subset, so on and so forth.  
4 If you turn down to Column 6, Line 57 on down, it says that -- Step 22: An  
5 initial entry is made due to a configurator that acts as a cache memory  
6 manager. Step 24: The configurator establishes the parameters and other  
7 indicators which may be needed by the cache management method selected  
8 by the site.  
9 So my question to you is: in Figure 12 we've got a script that shows the  
10 code that's used to refresh pages every 15 minutes. That code has  
11 parameters.  
12 Is the configurator providing those parameters that go into the script?  
13 MR. HUANG: It appears yes.  
14 JUDGE JEFFERY: Yes, okay. So if we have a configurator that sounds  
15 like to me is some kind of system that's plugging in these values, wouldn't  
16 there not be some sort of communication pay out between the configurator  
17 and script to make those variables? To plug in the variables, if you will?  
18 The values for the variables?  
19 MR. HUANG: Yes, they would.  
20 JUDGE JEFFERY: I bring that up because the -- it is a little sketchy on the  
21 details regarding what's going on with the administrator at the bottom of  
22 Column 5, but it does say that administrator configures the cache  
23 management system for a particular technique.  
24 As you say it can be a user, an administrator, or expert system doing it; but  
25 within the configurator, it seems to me to have some sort of involvement  
26 with setting up the script to run.

1 MR. HUANG: Yes.

2 JUDGE JEFFERY: Time is limited, Counsel, but I do have one question for  
3 you regarding an argument you made regarding Claim 7.

4 MR. HUANG: Yes?

5 JUDGE JEFFERY: Which was a 103 rejection over Scherr and the Leshem  
6 reference.

7 MR. HUANG: Yes.

8 JUDGE JEFFERY: Claim 7, 17 and 25 were all rejected under the same  
9 ground, basically. The argument that you made is with respect to Claim 7.  
10 As I understand your position, you're taking the position that the assembly  
11 script -- Claim 7 calls for the assembly script, has instructions for  
12 assembling constituent portions of the web page and updated portions of the  
13 web page. Two things.

14 MR. HUANG: Right.

15 JUDGE JEFFERY: I was looking at Claim 17, on the other hand. Claim 17  
16 strikes me as not requiring both those elements. In other words, it's broader.

17 MR. HUANG: Yes.

18 JUDGE JEFFERY: Okay. I wanted to square that away because the  
19 arguments seemed to be focused on both elements there.

20 MR. HUANG: Yes.

21 JUDGE JEFFERY: That's all I have. Do you have anything further,  
22 Counsel?

23 MR. HUANG: No, those are all my remarks.

24 JUDGE JEFFERY: Any questions?

25 JUDGE BLANKENSHIP: No.

26 JUDGE DANG: No.

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1 JUDGE JEFFERY: Thank you, Counsel.

2 Whereupon, the proceedings at 9:47 a.m. were concluded.

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